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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/032,940 | 12/26/2001 | Matt Chludzinski | ACS 58425 (3174P) | 7157 |

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EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3732

DATE MAILED: 05/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,940

Applicant(s)

CHLUDZINSKI ET AL. 

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-21 is/are allowed.
- 6) ☒ Claim(s) 1-10, 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 11-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3,15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lin et al. (6,344,045).

With respect to claims 1,3,15 Lin et al disclose a an intraluminal catheter (19) comprising an elongated shaft (22) having a proximal end (25) and a distal end (25) and an inner lumen (55) extending longitudinally therethrough, the shaft including expandable UHMWPE; as set forth in column 4, lines 1-6 (since the balloon is made of UHMWPE), column 4, lines 47-61.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,6,7,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al (6,344,045).

With respect to claims 4-7, 16, it is noted that Lin et al teach all the limitations, except for the inner liner having a thickness from 0.0002 to about 0.0006 and a porosity of 20 to 90 percent; as claimed by applicant. However, applicant fails to establish the criticality of such dimensions and absent from any conclusive statements concerning unexpected or unobvious results obtain from applicant's dimensions, the examiner believes that any dimensions could have been used since the device would have performed equally as well with any given dimensions.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al (6,344,045) in view of Simhambhatla et al. (6,428,506).

With respect to claim 2, although Lin et al teach of an expanded UHMWPE, it is noted that Lin et al did not teach of an expanded UHMWPE that is microporous and had a node and fibril microstructure comprising nodes interconnected by fibrils; as claimed by applicant. However, in a similar art, Simhambhatla et al evidence the use of an expanded UHMWPE so that the device under high strains exhibit low compliance due to rearrangement in the microstructure.

Therefore, given the teaching of Simhambhatla et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the Expanded UHMWPE of Lin et al with the expanded UHMWPE of Simhambhatla et al so that the device under high strains exhibit low compliance due to rearrangement in the microstructure.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lim et al (6,344,045) in view of Saab (5,499,973).

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With respect to claims 8-10, it is noted that Lim et al teach all the limitations, except for a reinforcing structure disposed between the polymeric outer jacket and the inner liner; as claimed by applicant. However, in a similar art, Saab evidences the use of a reinforcing structure disposed between the polymeric outer jacket and the inner liner to form a stiffening band.

Therefore, given the teaching of Saab, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a reinforcing structure in the device of Lim et al to form a stiffening band around the inner liner.

Allowable Subject Matter

Claims 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 17-21 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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|-----------|---------|--------------|
| 4,655,769 | 04-1987 | Zachariades |
| 6,547,828 | 04-2003 | Scott et al. |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 305-3591 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


PEDRO PHILOGENE
PRIMARY EXAMINER

Pedro Philogene
May 1, 2003